



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters

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Portland, OR 97204-1390

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TTY: 711

November 3, 2016

CERTIFIED MAIL: 70142870000133784133

Solopower Systems, Inc.
c/o National Registered Agents, Inc.
388 State St Ste 420
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-NWR-2016-065

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$14,403 for violations of hazardous waste storage, labeling, and management laws at your facility at 6308 North Marine Drive in Portland. Specifically, you have been assessed a penalty for storing hazardous metal-contaminated waste without a permit and for failing to label containers of hazardous wastewater with accumulation start dates. As a large-quantity generator of hazardous waste, Solopower is only permitted to store hazardous waste for 90 days at a time, and must properly label and date containers of hazardous waste. When DEQ inspected your facility, you were storing hazardous waste that had been accumulating for up to a year, and storing hundreds of gallons of waste without required accumulation dates.

DEQ is especially concerned about these violations because of the amount of hazardous waste involved and because DEQ has provided Solopower with technical assistance in complying with hazardous waste laws and issued Solopower a prior civil penalty for failing to monitor stormwater in violation of your stormwater permit.

DEQ appreciates your efforts to minimize the effects of the violations by properly labeling and disposing of your hazardous wastes, and also your efforts to prevent these violations from recurring by hiring an environmental consultant and training your staff. DEQ considered these efforts when determining the amount of civil penalty.

If you wish to appeal this matter, DEQ must receive a request for a contested case hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail – 700 NE Multnomah Street, Suite #600, Portland, OR 97232

Via fax - 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.



The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review it and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP. SEP documents are available on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below to request a paper copy.

DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.

If you have any questions, please contact me at (503) 229-6927. You may call toll-free within Oregon at 1-800-452-4011, extension 6927.

Sincerely,



Sarah G. Wheeler, Acting Manager
Office of Compliance and Enforcement

Enclosures

cc: Laurey Cook, Northwest Region, DEQ



1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:)
4 SOLOPOWER SYSTEMS, INC.,)
 a Delaware corporation,)
5 Respondent.)
6 CASE NO. LQ/HW-NWR-2016-065

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 466.095, 468.100 and 468.126 through
10 468.140, ORS 466.990, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340,
11 Divisions 011, 012, 100 and 102.

12 II. FINDINGS OF FACT

13 1. Respondent operates a solar panel manufacturing business located at 6308 North Marine
14 Drive in Portland, Oregon (the Facility).

15 2. On December 8 and 11, 2015, DEQ conducted an inspection at the Facility to determine
16 Respondent's compliance with hazardous waste law.

17 3. At all relevant times Respondent has not held a permit to treat or store hazardous waste
18 at the Facility.

19 4. Respondent reported to DEQ that it generated approximately 30,000 pounds of
20 hazardous waste at the Facility in 2015 and that it was a large quantity generator of hazardous waste at
21 the Facility in 2015.

22 5. At the time of DEQ's inspection in December 2015, Respondent was generating more
23 than 2,200 pounds of hazardous waste each month.

24 6. On December 8 and 11, 2015, Respondent stored the following hazardous wastes,
25 assigned hazardous waste codes pursuant to the referenced regulations in 40 Code of Federal
26 Regulations (CFR) 261, as adopted by OAR 340-100-0002(1):
27

<i>Description of container</i>	<i>Contents</i>	<i>Hazardous waste code</i>	<i>Date on label</i>
One drum	Liquid selenium waste (labeled "Sel")	D010 261.24	12/1/14
One one-cubic-yard box	Wastewater filter and debris from electroplating operations	F006 261.31	12/11/14
One drum	Waste cadmium ammonia	D006 261.24	12/23/14
One one-cubic-yard box in 90-day accumulation area	Waste selenium filters and debris	D010 261.24	1/5/15
Box in 90-day accumulation area	Wastewater filters	F006 261.31	1/12/15
One one-cubic-yard box	Waste selenium filters and debris	D010 261.24	1/15/15
One one-cubic-yard box	Cadmium and selenium waste	D006 and D010 261.24	1/15/15
Two drums	Solid selenium waste (D010 on label)	D010 261.24	1/15/15
One drum	Liquid selenium waste	D010 261.24	1/19/15
One one-cubic-yard box in 90-day accumulation area	Wastewater filters and debris	F006 261.31	1/21/15
One drum	Solid selenium waste	D010 261.24	1/23/15
One drum	Solid selenium waste	D010 261.24	1/26/15
One drum	Waste cadmium ammonia	D006 261.24	2/1/15
Three 275-gallon totes labeled "hazardous waste"	Liquid selenium waste (D010 on one label)	D010 261.24	2/20/15
One one-cubic-yard box in 90-day accumulation area	Cadmium and/or selenium contaminated debris	D006 and D010 261.24	3/1/15
One drum	Solid selenium waste	D010 261.24	3/1/15
One 257-gallon tote labeled "hazardous waste"	Liquid selenium waste	D010 261.24	3/15/15
Green container	Resin used for wastewater treatment	F006 261.31	6/9/15

Green containers	Resin used for wastewater treatment	F006 261.31	6/20/15
Three drums	Liquid selenium waste	D010 261.24	7/10/15
Two green containers	Resin used for wastewater treatment	F006 261.31	8/19/15

7. On December 8 and 11, 2015, Respondent stored the following wastes without labeling them with the date the waste was first accumulated:

- a. One one-cubic-yard box in 90-day storage area containing selenium waste (F006 pursuant to 40 CFR 261.31 and D010 pursuant to 40 CFR 261.24);
- b. Four one-cubic-yard boxes containing hazardous waste debris between the waste treatment and plating areas (F006 pursuant to 40 CFR 261.31 and D010 pursuant to 40 CFR 261.24); and
- c. One half-full 275-gallon container of lab wastewater contaminated with cadmium and labeled as hazardous waste (D006 pursuant to 40 CFR 261.24).

8. On December 8 and 11, 2015, Respondent stored a blue plastic 55-gallon container of spent wastewater treatment filters (F006 pursuant to 40 CFR 261.31), and another blue plastic 55-gallon container of selenium waste (D010 pursuant to 40 CFR 261.24), without closing the containers. Respondent was not adding or removing waste from the container at the time.

9. On December 8 and 11, 2015, Respondent stored the following wastes without labeling the containers as "hazardous waste":

- a. The two containers described in paragraph 8 above;
- b. Four one-cubic-yard boxes containing selenium-contaminated waste debris (F006 pursuant to 40 CFR 261.31 and D010 pursuant to 40 CFR 261.24);
- c. Eight containers of waste resin used for wastewater treatment (F006 pursuant to 40 CFR 261.31); and
- d. One container in the wastewater area storing approximately 55 gallons of wastewater (F006 pursuant to 40 CFR 261.31).

10. On December 8 and 11, 2015, Respondent stored containers of hazardous waste in the 90-day storage area with only 11 inches of space between the containers.

III. CONCLUSIONS

1. Respondent has violated ORS 466.095(1)(a) and 40 CFR 262.34(a), adopted pursuant to OAR 340-100-0002(1), by storing hazardous waste at the Facility without a permit for more than 90 days, as described in paragraphs 1-6 of Section II above. This is a Class II violation, according to OAR 340-012-0068(2)(d). DEQ assesses an \$11,103 civil penalty for this violation.

2. Respondent has violated 40 CFR 262.34(a)(2), adopted pursuant to OAR 340-100-0002(1), by failing to mark containers of hazardous waste with the dates when accumulation in the containers began, as described in paragraphs 1-5 and 7 of Section II above. This is a Class II violation pursuant to OAR 340-012-0068(2)(a). DEQ assesses a \$3,300 civil penalty for this violation.

3. Respondent has violated 40 CFR 262.34(a)(1)(i), as it references 40 CFR 265.173(a), both adopted pursuant to OAR 340-100-0002(1), by failing to store hazardous waste in closed containers, as described in paragraphs 1-5 and 8 above. These are Class II violations pursuant to OAR 340-012-0068(2)(m). DEQ has not assessed a civil penalty for these violations.

4. Respondent has violated 40 CFR 262.34(a)(3), adopted pursuant to OAR 340-100-0002(1), by failing to clearly mark containers storing hazardous waste with the words “Hazardous Waste,” as described in paragraphs 1-5 and 9 of Section II above. These are Class II violations pursuant to OAR 340-012-0068(2)(b). DEQ has not assessed a civil penalty for these violations.

5. As described in paragraphs 1-5 and 11 in Section II above, Respondent violated 40 CFR 262.34(a)(4), as it references 40 CFR 265.35, both adopted pursuant to OAR 340-100-0002(1), by failing to provide sufficient aisle space to allow unobstructed movement of personnel and equipment in the event of an emergency. This is a Class II violation pursuant to OAR 340-012-0068(2)(k). DEQ has not assessed a civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO pay a total civil penalty of \$14,403. The determination of the civil penalty is

1 attached as Exhibits 1 and 2, which are incorporated as part of this Notice.

2 If you do not file a request for hearing as set forth in Section V below, your check or money order
3 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**
4 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97204.** Once you pay the penalty, the
5 Findings of Fact, Conclusions and Order become final.

6 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

7 You have a right to a contested case hearing on this Notice, if you request one in writing. You
8 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
9 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
10 this Notice or attached exhibits, you must include them in your request for hearing, as factual matters
11 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
12 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
13 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 700 NE Multnomah St.,**
14 **Suite 600, Portland, Oregon 97232,** or fax it to **503-229-5100.** An administrative law judge employed
15 by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183,
16 OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented
17 by an attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
18 association.

19 Active duty service-members have a right to stay proceedings under the federal
20 Servicemembers Civil Relief Act. For more information, please call the Oregon State Bar at 1(800)
21 452-8260 or the Oregon Military Department at 1(800) 452-7500. Additional information can be found
22 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website,
23 <http://legalassistance.law.af.mil/content/locator.php>.

24 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
25 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
26 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing,
27 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default

1 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
2 information submitted by you, as the record for purposes of proving a prima facie case.
3
4

5 November 3, 2016

6 Date

Office of Compliance and Enforcement

EXHIBIT NO. 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION No. 1: Storing hazardous waste more than 90 days without a permit, in violation of ORS 466.095(1)(a) and 40 CFR 262.34(a), adopted pursuant to OAR 340-100-0002(1).
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0068(2)(d).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(4)(c)(A)(i) because Respondent stored more than 1,000 gallons or 6,000 pounds of hazardous waste more than 90 days without a permit.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$6,000 for a Class II, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(M)(i) because Respondent is a large quantity generator of hazardous waste and violated a hazardous waste statute.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.
- "O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(d), because the violation continued for more than 28 days. Respondent should have disposed of the waste within 90 days of accumulation. Respondent stored hazardous waste with accumulation start dates as early as December 2014, and did not dispose of it until March 11, 2016.
- "M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. Respondent is a highly regulated business, operates under stormwater and air quality permits, and has reported to DEQ as a large quantity generator of hazardous waste and received technical assistance from DEQ on compliance with hazardous waste requirements in the recent past. By storing hazardous waste at its unpermitted facility for over a year, Respondent failed to take reasonable care to avoid a foreseeable risk of violation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -3 according to OAR 340-012-0145(6)(c), because Respondent made reasonable efforts to mitigate the effects of the violation by disposing of the hazardous waste at a permitted facility on or about March 11, 2016.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$2,103, the benefit it gained by delaying its disposal of hazardous waste. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$6,000 + [(0.1 x \$6,000) x (0 + 0 + 4 + 4 - 3)] + \$2,103
= \$6,000 [\$600 x 5] + \$2,103
= \$6,000 + \$3,000 + \$2,103
= \$11,103

EXHIBIT NO. 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION No. 2: Failing to label hazardous waste with an accumulation start date, in violation of 40 CFR§ 262.34(a)(2), adopted pursuant to OAR 340-100-0002(1).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0068(2)(a).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0135(4)(c)(B)(i) because Respondent's violations involved between 250-1,000 gallons or 1,500-6,000 pounds of hazardous waste and no acutely hazardous waste.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$3,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(M)(i) because Respondent is a large quantity generator of hazardous waste.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 0 according to OAR 340-012-0145(4)(a), because DEQ has insufficient information on which to base a finding of more than one day of violation.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. Respondent is a highly regulated business, operates under stormwater and air quality permits, and has reported to DEQ as a large quantity generator of hazardous waste and received technical assistance from DEQ on compliance with hazardous waste requirements in the recent past. By storing large amounts of hazardous waste at its Facility without labeling them with the accumulation start date, Respondent failed to take reasonable care to avoid a foreseeable risk of violation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -3 according to OAR 340-012-0145(6)(c), because Respondent made reasonable efforts to correct the violation. During DEQ's inspection, Respondent dated the containers it had start

date information on, and properly disposed of outdated hazardous waste on or about March 11, 2016.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 as DEQ does not have sufficient information on which to make an estimate under OAR 340-012-0150(1).

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 0 + 4 - 3)] + \0
 $= \$3,000 + [\$300 \times 1] + \$0$
 $= \$3,000 + \$300 + \$0$
 $= \$3,300$